

HANDBOOK FOR GRAND JURORS

Serving in the Superior Court of the State of Delaware

The purpose of this handbook is to inform grand jurors of their function and to explain legal language and proceedings. When in doubt as to how to proceed properly, grand jurors should seek guidance from the attorney general or the court.

IMPORTANCE OF SERVICE

The grand jury came with the colonists from England. Its origin was more than eight centuries ago. The right to indictment by grand jury is guaranteed as a fundamental right by the Constitutions of the State of Delaware and of the United States of America.

The grand jury plays an important part in the administration of criminal justice. The grand jury protects the people from possible abuse of power. No person may be prosecuted for a serious crime unless the State satisfies an independent body of citizens that there is probable cause to do so.

The grand jury is both a shield and a sword of justice—a shield to protect the innocent and a sword to prosecute the guilty. The grand jury is an arm of the court answerable to no one except the court for the proper performance of its important powers.

Grand jury service is a high duty of citizenship. Grand jurors put into practice the principles of our great heritage of liberty under law and help maintain local law and order. Their greatest reward is the knowledge that they have discharged this duty faithfully, honorably, and well.

SELECTION OF JURORS

State law requires that jurors be selected at random from a fair cross section of the county in which they live. Thus, everyone has an equal opportunity and obligation to serve.

The names of jurors are drawn at random from lists of registered voters and other sources when necessary to assure that all groups in the community have a chance to be represented. Those qualified persons whose names have been drawn and who are not excused from service are summoned to appear for duty as jurors. The persons summoned to serve for a term or a case are a **panel**. The court selects members of the panel to serve as grand jurors.

Since jury service is an obligation of citizenship, persons summoned should request excuse only when necessary. Although jury service may be inconvenient, those who serve generally find it to be a worthwhile experience and feel justifiably proud to have performed this important civic duty.

OVERVIEW OF THE CRIMINAL PROCESS

The **Attorney General**, who is the chief law enforcement officer of the State, prosecutes all criminal proceedings. The attorney general heads the State Department of Justice and appoints a number of lawyers as **deputy attorneys general** to assist in the performance of the duties of the attorney general.

All criminal prosecutions are brought in the name of the **State**. The person charged with a violation of law is the defendant. The charge against the defendant may be brought in two ways: by indictment or by information.

An **indictment** is a grand jury's formal written accusation charging one or more identified persons with the commission of a criminal offense. Each offense charged is stated in a separate **count** of the indictment.

The defendant will usually have been arrested by the police and held by a committing magistrate for action by the grand jury. Because the defendant will either have posted bail or be in custody in default of bail awaiting grand jury action, it is important that the charge be presented to the grand jury without unreasonable delay and that the grand jury act promptly.

There is a constitutional right to indictment by grand jury for all serious crimes or any charge commenced in Superior Court, unless a defendant agrees to give up this right and consents to the filing of an **information**. An information is a written charge against the defendant filed by the attorney general rather than by a grand jury.

An **arraignment** is the defendant's entry of a plea of "guilty" or "not guilty" to the charges in the indictment or information. No trial is needed when the defendant admits to committing the crime by pleading guilty. Upon entry of a plea of not guilty, the defendant must stand trial.

An indictment or information is merely an accusation and is not evidence or indication of guilt. At trial, the defendant is presumed innocent and may not be found guilty unless the State meets its burden of proving to the satisfaction of the petit jury that the defendant is guilty beyond a reasonable doubt.

The petit jury decides whether the defendant is guilty or not guilty as to each offense charged. If the judge so instructs, the jury may find the defendant guilty of a less serious offense than the one charged. If a defendant is convicted, sentencing is the responsibility of the judge.

GRAND AND PETIT JURY

Juries that brought criminal charges were originally composed of twenty-three persons and juries that tried the charges were composed of twelve persons. Thus, the former were called the **grand**, meaning large, and the latter were called **petit**, meaning small.

Grand juries in New Castle County are now composed of fifteen persons. Grand juries in Kent County and Sussex County are now composed of ten persons. Although petit juries in other jurisdictions vary in size, they are still composed of twelve persons in Delaware, unless the parties to a case agree to a jury of six.

Grand and petit juries have different functions. The grand jury's function is to decide whether the evidence presented by the State establishes **probable cause** to conclude that a crime was committed and that the person charged should be put to trial to determine guilt or innocence. Probable cause exists when there is reasonable ground to believe that the person named has committed the crime stated in the proposed indictment. If the grand jury is satisfied that probable cause exists, it returns an indictment charging the defendant.

If the defendant pleads not guilty, there will be a trial. At trial, the defendant has the right to be present, to be represented by counsel, to confront and cross-examine witnesses called by the State, and to testify and call witnesses in defense. The petit jury decides whether or not the evidence presented at trial proves guilt beyond a reasonable doubt, and returns a verdict of guilty or not guilty.

ACCUSING BODY

Matters may be brought to the grand jury's attention in three ways: by the attorney general, by the court, or by a member of the grand jury. In all cases, the grand jury must hear evidence before taking action.

The grand jury's work will normally be concerned with charges brought to its attention by the attorney general. As to those incidents otherwise brought to its attention, no bill of indictment will have been prepared in advance by the attorney general. A formal written accusation of crime brought on the grand jurors' own initiative based on facts known by them or discovered by their investigation is a **presentment**. The grand jury should consult with the attorney general or the court before attempting to proceed on its own initiative. This is necessary because the grand jury has no investigative staff and legal assistance would be necessary.

The grand jury is not completely free to compel a trial of anyone it chooses. The attorney general has charge of all criminal prosecutions. Thus, the attorney general and the grand jury act as checks upon each other. This assures that neither may arbitrarily wield the awesome power to prosecute a person for a serious crime.

In connection with the grand jury's work as an accusing body, grand jurors should bear in mind that they may seek to change the law through the General Assembly, but must enforce the law as it exists. Thus, even if a grand juror considers a law harsh or unwise, that should not influence the grand juror's judgment in carrying out the duties of the office.

INVESTIGATING BODY

The grand jury may make investigations on its own initiative and report its findings to the court in a grand jury report, or written statement, not charging any persons with the commission of a crime. It is in this special field that the inherent powers and responsibilities of grand juries are most apparent. But these powers must be exercised very cautiously. No grand jury should embark upon a special investigation without careful consideration of its importance and value to the citizens of the county. The grand jury may be required by the court or the attorney general to undertake such an investigation, or a special investigation may be undertaken as a result of information coming to the grand jury from other sources. There are distinct limitations as to what a grand jury may do in the course of such investigations and in its report or presentment. The grand jury should call on the attorney general and the court for guidance and advice as to the propriety of any proposed investigation or presentment before attempting to proceed on its own initiative.

The grand jury may visit and inspect institutions supported by public funds. The visit may be made at any reasonable time and in any manner that suits the convenience of the grand jury. After such inspection, a written report should be made to the court as to the condition of the institution and any recommendation for improvement.

THE GRAND JUROR'S OATH

Each grand jury must swear or affirm to the following ancient grand juror's oath:

Do you, and each of you, solemnly swear on the Holy Bible of Almighty God (or solemnly, sincerely, and truly declare and affirm) that as members of the grand jury of the State of Delaware, for _____ County, you will **diligently inquire and true presentment make of all matters and things as shall be given you in charge, or otherwise come to your knowledge, touching this present service,** and do you further swear (or affirm) that the **counsel of the State, your fellows and your own, you shall keep secret, and that you shall present no person for envy, hatred or malice, nor shall you leave any person unrepresented because of fear, favor, affection, reward or the hope of reward,** and do you further swear (or affirm) that you shall **present all things truly as they come to your knowledge, according to the best of your understanding,** so help you God (or do you so affirm)?

This language may seem archaic and somewhat lengthy and involved, but the oath is binding and sacred. The oath describes in detail grand jurors' essential duties of diligence, secrecy, impartiality, honesty, and discretion. If grand jurors follow the oath to

the letter, they will meet their full obligation as members of the grand jury, and will perform their responsibilities in accordance with the law.

ORGANIZATION OF THE GRAND JURY

When grand jurors have been sworn or affirmed, they become a part of the grand jury. The oath is administered by a deputy clerk in the office of the **Prothonotary**, who is the clerk of the court, in the presence of a judge and of the other grand jurors.

The presiding judge will charge the grand jury on its duties. The judge may instruct the grand jury formally in a courtroom or may do so informally when the oath is administered to new grand jurors. The attorney general may also give the grand jury advice and guidance.

The court will appoint one of the grand jurors to be the **foreperson**, or presiding officer, of the grand jury. A **deputy foreperson** will also be appointed to act as presiding officer in the foreperson's absence. The foreperson or deputy foreperson will preside at all sessions of the grand jury. The foreperson has the right and duty to maintain order and see to the businesslike conduct of the grand jury. The foreperson generally leads in the questioning of witnesses, but any juror may, and should, freely ask questions as well.

Although not required by law, the practice has been for the foreperson to designate a **secretary**. The secretary's main duty is to record the number of jurors concurring in each indictment. The foreperson may also designate a juror to serve as sergeant-at-arms, having such duties as the foreperson may decide, such as reading the indictment to the jury, advising the bailiff to summon or release witnesses, and such other assistance to the grand jury as the foreperson may request.

QUORUM FOR TRANSACTING BUSINESS

Twelve of the 15 members of the grand jury in New Castle County and 7 of the 10 members of the grand jury in Kent County and in Sussex County constitute a quorum for the transaction of business. If fewer than this number are present, even for a moment, the proceedings of the grand jury must stop. This shows how important it is that each grand juror conscientiously attend all meetings or notify the court promptly if unable to do so.

EVIDENCE BEFORE THE GRAND JURY

The attorney general proposes bills of indictment for consideration by the grand jury. Every bill of indictment proposed by the attorney general must be acted upon by the grand jury. In the usual case, a deputy attorney general will not present the evidence of alleged violation of the law, but the attorney general may participate in some cases. But neither the attorney general nor any deputy or assistant or anyone other than grand jurors may remain in the room while the grand jury deliberates and votes on an indictment.

Much of the grand jury's time is spent hearing testimony by witnesses and examining documentary or other evidence in order to determine whether such evidence justifies an indictment. It is not necessary that the grand jury hear all of the witnesses to find an indictment. It may decide that probable cause to put the accused on trial has been shown after hearing one or two witnesses. If that happens, there is no reason to hear more witnesses. On the other hand, the grand jury may not ignore a proposed indictment without hearing all of the witnesses, because the last witness might be the one whose testimony justifies an indictment. The grand jury may ask that additional witnesses be called if it believes this necessary.

QUESTIONING THE WITNESS

Witnesses are called to testify one after another. Before testifying, the witness must swear or affirm to tell the truth. The foreperson administers the oath to the witness. The witness may then be questioned by the attorney general, if present, by the foreperson, and by other grand jurors.

All questions asked of each witness should be proper and relevant to the charge under consideration. In case of doubt as to whether a question is appropriate, the advice of the attorney general may be sought. If necessary, a ruling may be obtained from the court.

If a witness who is appearing before the grand jury refuses to answer a question, the attorney general may bring the matter before the court for a ruling as to whether or not an answer may be compelled.

Because of the need for secrecy, it is very important that only authorized persons be present in the grand jury room while evidence is being presented. This means that only the following persons may be present: the grand jurors, the deputy attorney general, the witness under examination, an interpreter when required, and, with the court's approval, a stenographer or operator of a recording device. If an indictment is ultimately returned, the presence of unauthorized persons in the grand jury room could invalidate it.

EVIDENCE NEEDED TO INDICT

Grand jurors must carefully consider the evidence presented, usually without an explanation being offered by the accused, and decide whether they are satisfied that there is probable cause or, in other words, reasonable ground to believe that the crime stated in the proposed indictment was committed and that the accused committed it. Only the evidence presented to the grand jury in the grand jury room may be considered in determining whether to find an indictment.

GRAND JURY DELIBERATIONS

When the grand jury has received all the evidence on a given charge, all persons other than the members of the grand jury must leave the room. The presence of any other

person in the grand jury room while the grand jury deliberates or votes may nullify an indictment.

After all persons other than the grand jury members have left the room, the foreperson will ask the grand jurors to discuss and vote upon the proposed indictment. Each grand juror has the right to express their view of the case under consideration. Only after each grand juror has been given the opportunity to be heard should the vote be taken.

FINDING AND RETURN OF INDICTMENT

The foreperson or a grand juror designated by the foreperson must keep a record of the number of jurors concurring in the finding of every indictment and file the record with the prothonotary. This record will not be made public except on order of the court.

An indictment may be found in New Castle County only upon the affirmative vote of 9 or more grand jurors and in Kent County or in Sussex County only upon the affirmative vote of 7 or more grand jurors.

If there are sufficient affirmative votes in favor of finding an indictment, the foreperson signs the proposed indictment as a “true bill.” If there are less than the required number of votes, the foreperson so reports by marking the first page of the proposed indictment or the county or counts that have not received the required number of votes “ignored.” Every indictment presented to the grand jury must be returned to a judge in open court either as a “true bill” or “ignored.”

SECRECY OF GRAND JURY PROCEEDINGS

The law imposes upon each grand juror an obligation of secrecy. This obligation is emphasized in the oath each takes and in the charge given to the grand jury by the judge.

The tradition of secrecy continues as a vital part of the grand jury system for many reasons. It protects the grand jurors from being subjected to pressure by persons who may be involved in the actions of the grand jury. It prevents the escape of those against whom an indictment is being considered. It encourages witnesses before the grand jury to give full and truthful information as to the commission of a crime. It also prevents tampering with or intimidation of such witnesses before they testify at trial. Finally, it prevents the disclosure of investigations that result in no action by the grand jury and avoids any stigma the public might attach to one who is the subject of a mere investigation by the grand jury.

The contents of all indictments, presentments, and reports are secret and may not be disclosed by the grand jury except by order of the court. Certain disclosure may be made to the attorney general, of course, for use in the performance of the duties of that office, but disclosure of the grand jury’s deliberations and the vote of any juror must not be made even to the attorney general. No one may inquire into what a grand juror said or how a grand juror voted, except upon order of the court.

Any indictment, presentment, or report must be returned in open court directly to the judge then presiding, and shall not otherwise be disclosed by any member of the grand jury. The presiding judge may order that an indictment shall be sealed until the defendant is arrested.. Any presentment or report must be sealed until it is considered by the judges of the court.

The pledge of secrecy is paramount and permanent. It is necessary to achieve protection for grand jurors and all individuals involved, including witnesses, and is in the interest of all citizens. Knowing violation of the restrictions on disclosure is punishable as a contempt of court.

No more need be said as to the importance of a grand juror's not communicating to family, to friends, to anyone, what takes place in the grand jury room. The only time this may be done is when, after a full hearing of all concerned, the court itself under certain circumstances orders such a disclosure in the interest of justice.

PROTECTION OF GRAND JURORS

The law gives the members of a grand jury broad immunity for actions taken by them within the scope of their authority as grand jurors. Because of this immunity, grand jurors must perform their duties with the highest sense of responsibility.

PRACTICAL SUGGESTIONS

Grand jurors should attend meetings regularly so that a quorum will be present to conduct the grand jury's business.

Grand jurors should be on time for each meeting so that others are not kept waiting.

Grand jurors should treat witnesses courteously and question them in an orderly manner.

Grand jurors should pay close attention to the testimony and consider the evidence conscientiously.

Grand jurors should not dismiss a witness or shut off discussion until all grand jurors are ready to vote.

Grand jurors should not discuss the cases under investigation with anyone except other grand jurors and the deputy attorney general, and then only in the grand jury room.

Grand jurors should be scrupulously fair and independent in their consideration of the case, in order that the grand jury's important purpose will be served.

Grand jurors should report to the court any improper attempt by anyone to talk or otherwise communicate with them about grand jury proceedings.

Grand jurors should seek guidance from the attorney general or the court when in doubt about how to proceed properly.

CONCLUSION

Justice ultimately depends upon the quality of the jurors who serve in our courts. There is no more worthwhile work than the proper performance of jury duty, and the faithful fulfillment of this obligation should bring its own reward in the satisfaction of an important civic service well done.